IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

CRP.No. 998 of 2007()

AGAINST THE ORDER DATED 24/10/2007 IN EP 542/2006 IN OS.719/2000 of M.C.,KANNUR

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REVN. PETITIONER: RESPONDENT

C.H.MOHAMMED JALEEL, S/O. ERAMULLAN
KUTTY HAJI, AGED 40 YEARS, RAHIYANAS,
P.O.MUNDAYAD, ELAYAVOOR AMSOM, KANNUR DISTRICT.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT: PETITIONER

P.MUNEERA, D/O. MOHAMMED ALI,
AGED 38 YEARS, HUNIGHAR, BENGALI MOHALLA,
KANNUR-670 003.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.998 of 2007

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Dated this the 19th day of November, 2007.

ORDER

This revision petition is preferred against the order of the Munsiff, Kannur in E.P.No.542 of 2006 in O.S.No.719 of 2000. Admittedly, the revision petitioner is a handicapped person and there are no documents to show that he is having income from the property. But it is seen that he is a co-owner of a building wherein he is having one out of seven shares. Therefore, the court held that he is liable to be proceeded against under Order 21 Rule 38 and Rule 40 of C.P.C. It is true that in the decision reported in **Kuppuswamy** v. **P.G. Menon** - 1992 (2) K.L.T. 203, it is held as follows:

> "Where it is proved or admitted or otherwise evident that the judgment debtor owns or possess a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sale or mortgage or creating other encumbrance of the house. In such circumstances, it is open to the judgment debtor to rebut the presumption and prove either that he does not own or possess the house or that no alienation or encumbrance is possible of that property."

2. It appears that the petitioner has not been given sufficient opportunity to rebut the presumption. Considering the peculiar facts and circumstances of the case and taking into account the situation that he is a physically handicapped person, I feel that interest of justice demands that an opportunity must be given to him to rebut the presumption.

3. Therefore, I set aside the order under challenge and remit the case back to the Executing Court for giving an opportunity to the revision petitioner to rebut the presumption as mentioned above. Needless to say that the decree holder must also be given an opportunity to meet that evidence. Since I am disposing of the matter at the admission stage itself, I direct the court below to give a posting date to the decree holder after the first appearance of the judgment debtor and then dispose of the matter in accordance with law. Petitioner is directed to appear before the Executing Court on 19.12.2007.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 20/11